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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEX ANTONIO CRUZ,

Defendant and Appellant.

F042110

(Super. Ct. No. SC083749A)

**OPINION**

APPEAL from a judgment of the Superior Court of Kern County. Clarence Westra, Jr., Judge.

Gregory H. Mitts for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, Matthew L. Cate and Laura Wetzel Simpton, Deputy Attorneys General, for Plaintiff and Respondent.

**BACKGROUND**

With a single shot to the head, 23-year-old Alex Cruz killed his 17-year-old girlfriend pregnant with their child. A jury found him guilty of first degree murder and statutory rape and found true an allegation of personal and intentional discharge of a firearm causing death. (Pen. Code, §§ 187, subd. (a), 261.5, subd. (c), 12022.53, subds.

(a)(1), (d).) On appeal, he argues insufficiency of the evidence of first degree murder and prejudicial admission of evidence of prior bad acts. We will affirm the judgment.

## **DISCUSSION**

### ***A. Sufficiency of the Evidence***

In reliance on *People v. Anderson* (1968) 70 Cal.2d 15, Cruz argues that the record contains insufficient evidence of first degree murder. “Unreflective reliance on *Anderson* for a definition of premeditation is inappropriate. The *Anderson* analysis was intended as a framework to assist reviewing courts in assessing whether the evidence supports an inference that the killing resulted from preexisting reflection and weighing of considerations. It did not refashion the elements of first degree murder or alter the substantive law of murder in any way. [Citation.]” (*People v. Thomas* (1991) 2 Cal.4th 489, 517.)

The record shows that the killing was premeditated and deliberated. Sheriff’s deputies investigating a reported homicide forced open a locked bedroom door at the apartment where Cruz and his girlfriend lived and found her body inside some garbage bags beneath a love seat. A blood-soaked towel was in the middle of a large pool of blood beneath an ottoman in the middle of the bedroom. A trail of blood led from there to the love seat. The cause of death was a single gunshot wound to the head. Stippling on the face indicated the gun was fired six to twelve inches from the head. White caulking was smeared into the entry wound in an apparent attempt to stop the flow of blood.

Cruz told a sheriff’s detective that he and his girlfriend argued about his former wife and her former boyfriend, that after saying she needed time to herself she began to pack, and that he said “just keep walking and don’t look back.” She tore a photograph of his former wife, kicked a puppy, and reached for his gun. After he grabbed the gun and she tried to hit him, he pulled the trigger and shot her. He said the shooting was an accident.

Cruz told a jail inmate that his girlfriend said she was going to see her mother on the day before the killing, that he went to her mother's home but she was not there, and that after bribing her brother with drugs he learned she had gone to the fairgrounds to see her former boyfriend. Cruz went to the fairgrounds, threw her into the car, and drove her back to their apartment, where she told him she was thinking of moving back home with her mother. Suspecting her of cheating on him, he loaded and pointed a gun at her and said, "[I]f you leave me or you cheat on me again, I will kill you." She spent the night there with him but in the morning told him she wanted to move back home with her mother. When he thought she was about to tear a photograph of his former wife, he grabbed the loaded gun. She threatened to turn him in for dealing drugs and having sex with a minor if he did not leave her alone. "[I]f you do that, I will kill you," he said. She grabbed for the photograph and kicked a puppy. He told her not to do that again, but she tried to kick the puppy again. He shot her. He told the jail inmate "the only thing he regretted was that he didn't dispose of the body and run."

That record shows evidence of planning (Cruz's loading the gun the night before the shooting and arming himself with the loaded gun right before the shooting), motive (keeping his girlfriend from cheating on him, from leaving him, and from turning him in for dealing drugs and having sex with a minor), and a manner of killing indicative of a deliberate intent to kill (firing a shot at a vital area of the body at close range and trying to hide evidence of the homicide instead of calling for help). (*People v. Koontz* (2002) 27 Cal.4th 1041, 1082.) In our due process test of the sufficiency of the evidence, the "critical inquiry" is "to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." (*Jackson v. Virginia* (1979) 443 U.S. 307, 318; U.S. Const., 14th Amend.) In conducting that inquiry, we must "'view the evidence in a light most favorable to [the prosecution] and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.'" (*People v.*

*Johnson* (1980) 26 Cal.3d 557, 576; Cal. Const., art. I, § 15.) We reject Cruz’s argument that the evidence of first degree murder was insufficient.

***B. Prior Bad Acts***

In a motion in limine, the prosecutor sought to admit evidence of two prior bad acts by Cruz. In one, he pointed a gun at the head of a man who was digging through a dumpster and told him to quit going through his personal things. In the other, he racked and pointed a handgun at his brother’s friend and threatened to kill him. The prosecutor argued admissibility on issues of intent and absence of mistake or accident. (Evid. Code, § 1101, subd. (b).) Cruz’s counsel argued inadmissibility both as character evidence and as evidence more prejudicial than probative. (Evid. Code, §§ 352, 1101, subd. (a).) The court ruled the evidence admissible. At trial, the jury heard evidence of the two prior bad acts as well as Cruz’s admission to the jailhouse informant that he dealt drugs and had sex with a minor. Cruz argues the admission of that evidence requires reversal.

The two prior bad acts the parties litigated on the motion in limine were expressly statutorily admissible on issues of intent and absence of mistake or accident. (Evid. Code, § 1101, subd. (b).) The evidence of Cruz’s dealing drugs and having sex with a minor was expressly statutorily admissible on the issue of motive. (Evid. Code, § 1101, subd. (b).) An order admitting evidence pursuant to Evidence Code section 1101, subdivision (b) is reversible only for an abuse of discretion and only if the ruling “falls outside the bounds of reason.” (*People v. Kipp* (1998) 18 Cal.4th 349, 371.) The ruling here shows no abuse of discretion and falls well within the bounds of reason.

The prejudice that Evidence Code section 352 seeks to avoid is not the prejudice or damage to a defense that naturally flows from highly probative evidence. (*People v. Karis* (1988) 46 Cal.3d 612, 638.) “Rather, the statute uses the word in its etymological sense of ‘prejudging’ a person or cause on the basis of extraneous factors. [Citation.]” (*People v. Farmer* (1989) 47 Cal.3d 888, 912, overruled on another ground in *People v. Waidla* (2000) 22 Cal.4th 690, 724, fn. 6.) The statute contemplates excluding evidence

that “‘uniquely tends to evoke an emotional bias’” against a party and “‘has very little effect on the issues.’” (*People v. Minifie* (1996) 13 Cal.4th 1055, 1070-1071.)

The evidence of the two prior bad acts the parties litigated on the motion in limine showed Cruz’s willingness to use a gun during an argument. That evidence was relevant to the critical issue of whether he accidentally or intentionally shot his girlfriend. The evidence in his admission to the jail inmate was likewise relevant to motive. None of that evidence involved conduct even remotely as grave as the murder for which he was standing trial. (See *People v. Barnett* (1998) 17 Cal.4th 1044, 1118.) The court carefully instructed the jury to consider that evidence not to show disposition but only to show the requisite mental state or intent of murder and to show he had the knowledge or possessed the means to commit the crime. (CALJIC No. 2.50.) An order admitting evidence pursuant to Evidence Code section 352 is reversible only for an abuse of discretion. (*People v. Minifie, supra*, 13 Cal.4th at p. 1070.) The ruling here shows no abuse of discretion.

### **DISPOSITION**

We affirm the judgment.

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Gomes, J.

WE CONCUR:

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Wiseman, Acting P.J.

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Dawson, J.